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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DEMAND FOR JURY TRIAL

1 Plaintiffs ABANTE ROOTER AND PLUMBING and SIDNEY NAIMAN
2 (“Plaintiffs”), individually and on behalf of all others similarly situated, alleges the
3 following upon information and belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiffs bring this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of BD FUNDING GROUP, LLC
8 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiffs on
9 Plaintiffs’ cellular telephones in violation of the Telephone Consumer Protection
10 Act, *47 U.S.C. § 227 et seq.* (“TCPA”) and related regulations, specifically the
11 National Do-Not-Call provisions, thereby invading Plaintiffs’ privacy.

12 **JURISDICTION & VENUE**

13 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiffs,
14 residents of California, seek relief on behalf of a Class, which will result in at least
15 one class member belonging to a different state than that of Defendant, a New York
16 limited liability company. Plaintiffs also seek up to \$1,500.00 in damages for each
17 call in violation of the TCPA, which, when aggregated among a proposed class in
18 the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
19 Therefore, both diversity jurisdiction and the damages threshold under the Class
20 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

21 3. Venue is proper in the United States District Court for the Northern
22 District of California pursuant to *28 U.S.C. 1391(b)* and because Defendant does
23 business within the State of California and Plaintiffs reside within the Counties of
24 Alameda and Contra Costa.

25 **PARTIES**

26 4. Plaintiff, ABANTE ROOTER AND PLUMBING (“Plaintiff
27 ABANTE”), is a corporation of the State of California, whose principal place of
28 business is in the county of Alameda and is a “person” as defined by *47 U.S.C. §*

1 153 (39).

2 5. Plaintiff, SIDNEY NAIMAN (“Plaintiff NAIMAN”), is a natural
3 person residing in Contra Costa County, California and is a “person” as defined by
4 47 U.S.C. § 153 (39).

5 6. Defendant, BD FUNDING GROUP, LLC (“Defendant”) is business
6 lending loan company, and is a “person” as defined by 47 U.S.C. § 153 (39).

7 7. The above named Defendant, and its subsidiaries and agents, are
8 collectively referred to as “Defendants.” The true names and capacities of the
9 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
10 currently unknown to Plaintiffs, who therefore sue such Defendants by fictitious
11 names. Each of the Defendants designated herein as a DOE is legally responsible
12 for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend
13 the Complaint to reflect the true names and capacities of the DOE Defendants when
14 such identities become known.

15 8. Plaintiffs are informed and believe that at all relevant times, each and
16 every Defendant was acting as an agent and/or employee of each of the other
17 Defendants and was acting within the course and scope of said agency and/or
18 employment with the full knowledge and consent of each of the other Defendants.
19 Plaintiffs are informed and believe that each of the acts and/or omissions
20 complained of herein was made known to, and ratified by, each of the other
21 Defendants.

22 **FACTUAL ALLEGATIONS**

23 9. Beginning in or around October 2017, Defendant contacted Plaintiffs
24 on Plaintiffs’ cellular telephone numbers ending in -7210, -7511, and -5502 in an
25 attempt to solicit Plaintiffs to purchase Defendant’s services.

26 10. Defendant used an “automatic telephone dialing system” as defined
27 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiffs seeking to solicit its services.

28 11. Defendant contacted or attempted to contact Plaintiffs from telephone

1 numbers confirmed to be Defendant's, including but not limited to: (321) 421-
2 1092, (321) 574-6090, (347) 491-4855, (925) 935-5502, and 1003.

3 12. When Plaintiffs would answer Defendant's call, a pre-recorded
4 message would play, prompting Plaintiffs to press "1" in order to speak to an
5 operator.

6 13. Defendant's calls constituted calls that were not for emergency
7 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

8 14. During all relevant times, Defendant did not possess Plaintiffs' "prior
9 express consent" to receive calls using an automatic telephone dialing system or an
10 artificial or prerecorded voice on their cellular telephones pursuant to *47 U.S.C. §*
11 *227(b)(1)(A)*.

12 15. Further, Plaintiffs' cellular telephone numbers ending in -7210, -7511,
13 and -5502 were added to the National Do-Not-Call Registry on or about July 12,
14 2018, August 27, 2009, and July 27, 2008.

15 16. Defendant placed multiple calls soliciting its business to Plaintiffs on
16 their cellular telephones ending in -7210, -7511, and -5502 in or around October
17 2017 and continuing until November 2017.

18 17. Such calls constitute solicitation calls pursuant to *47 C.F.R. §*
19 *64.1200(c)(2)* as they were attempts to promote or sell Defendant's services.

20 18. Plaintiffs received numerous solicitation calls from Defendant within
21 a 12-month period.

22 19. Plaintiffs requested for Defendant to stop calling Plaintiffs during one
23 of the initial calls from Defendant, thus revoking any prior express consent that had
24 existed and terminating any established business relationship that had existed, as
25 defined under *16 C.F.R. 310.4(b)(1)(iii)(B)*.

26 20. Despite this, Defendant continued to call Plaintiffs in an attempt to
27 solicit its services and in violation of the National Do-Not-Call provisions of the
28 TCPA for their telephone numbers -7511 and -5502.

21. Upon information and belief, and based on Plaintiffs' experiences of being called by Defendant after requesting they stop calling, and at all relevant times, Defendant failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

CLASS ALLEGATIONS

22. Plaintiffs bring this action individually and on behalf of all others similarly situated, as a member the four proposed classes (hereafter, jointly, “The Classes”). The class concerning the ATDS claim for no prior express consent (hereafter “The ATDS Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

23. The class concerning the ATDS claim for revocation of consent, to the extent prior consent existed (hereafter “The ATDS Revocation Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had revoked any prior express consent to receive such calls prior to the calls within the four years prior to the filing of this Complaint.

24. The class concerning the National Do-Not-Call violation (hereafter

1 “The DNC Class”) is defined as follows:

2 All persons within the United States registered on the
3 National Do-Not-Call Registry for at least 30 days, who
4 had not granted Defendant prior express consent nor had
5 a prior established business relationship, who received
6 more than one call made by or on behalf of Defendant
7 that promoted Defendant’s products or services, within
8 any twelve-month period, within four years prior to the
filing of the complaint.

9 25. The class concerning the National Do-Not-Call violation following
10 revocation of consent and prior business relationship, to the extent they existed
11 (hereafter “The DNC Revocation Class”) is defined as follows:

12 All persons within the United States registered on the
13 National Do-Not-Call Registry for at least 30 days, who
14 received more than one call made by or on behalf of
15 Defendant that promoted Defendant’s products or
16 services, after having revoked consent and any prior
17 established business relationship, within any twelve-
month period, within four years prior to the filing of the
complaint.

18 26. Plaintiffs represent, and are members of, The ATDS Class, consisting
19 of all persons within the United States who received any solicitation telephone calls
20 from Defendant to said person’s cellular telephone made through the use of any
21 automatic telephone dialing system or an artificial or prerecorded voice and such
22 person had not previously not provided their cellular telephone number to
23 Defendant within the four years prior to the filing of this Complaint.

24 27. Plaintiffs represent, and are members of, The ATDS Revocation
25 Class, consisting of all persons within the United States who received any
26 solicitation/telemarketing telephone calls from Defendant to said person’s cellular
27 telephone made through the use of any automatic telephone dialing system or an

1 artificial or prerecorded voice and such person had revoked any prior express
2 consent to receive such calls prior to the calls within the four years prior to the
3 filing of this Complaint.

4 28. Plaintiffs represent, and are members of, The DNC Class, consisting
5 of all persons within the United States registered on the National Do-Not-Call
6 Registry for at least 30 days, who had not granted Defendant prior express consent
7 nor had a prior established business relationship, who received more than one call
8 made by or on behalf of Defendant that promoted Defendant's products or services,
9 within any twelve-month period, within four years prior to the filing of the
10 complaint.

11 29. Plaintiffs represent, and are members of, The DNC Revocation Class,
12 consisting of all persons within the United States registered on the National Do-
13 Not-Call Registry for at least 30 days, who received more than one call made by or
14 on behalf of Defendant that promoted Defendant's products or services, after
15 having revoked consent and any prior established business relationship, within any
16 twelve-month period, within four years prior to the filing of the complaint.

17 30. Defendant, its employees and agents are excluded from The Classes.
18 Plaintiffs do not know the number of members in The Classes, but believes the
19 Classes members number in the thousands, if not more. Thus, this matter should
20 be certified as a Class Action to assist in the expeditious litigation of the matter.

21 31. The Classes are so numerous that the individual joinder of all of its
22 members is impractical. While the exact number and identities of The Classes
23 members are unknown to Plaintiffs at this time and can only be ascertained through
24 appropriate discovery, Plaintiffs are informed and believes and thereon alleges that
25 The Classes includes thousands of members. Plaintiffs allege that The Classes
26 members may be ascertained by the records maintained by Defendant.

27 32. Plaintiffs and members of The ATDS Class and The ATDS
28 Revocation Class were harmed by the acts of Defendant in at least the following

ways: Defendant illegally contacted Plaintiffs and ATDS Class members via their cellular telephones thereby causing Plaintiffs and ATDS Class and ATDS Revocation Class members to incur certain charges or reduced telephone time for which Plaintiffs and ATDS Class and ATDS Revocation Class members had previously paid by having to retrieve or administer messages left by Defendant during those illegal calls, and invading the privacy of said Plaintiffs and ATDS Class and ATDS Revocation Class members.

33. Common questions of fact and law exist as to all members of The ATDS Class which predominate over any questions affecting only individual members of The ATDS Class. These common legal and factual questions, which do not vary between ATDS Class members, and which may be determined without reference to the individual circumstances of any ATDS Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant made any telemarketing/solicitation call (other than a call made for emergency purposes or made with the prior express consent of the called party) to a ATDS Class member using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;
- b. Whether Plaintiffs and the ATDS Class members were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant should be enjoined from engaging in such conduct in the future.

34. As persons that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiffs' prior express consent, Plaintiffs are asserting

1 claims that are typical of The ATDS Class.

2 35. Common questions of fact and law exist as to all members of The
3 ATDS Revocation Class which predominate over any questions affecting only
4 individual members of The ATDS Revocation Class. These common legal and
5 factual questions, which do not vary between ATDS Revocation Class members,
6 and which may be determined without reference to the individual circumstances of
7 any ATDS Revocation Class members, include, but are not limited to, the
8 following:

9 a. Whether, within the four years prior to the filing of this
10 Complaint, Defendant made any telemarketing/solicitation call
11 (other than a call made for emergency purposes or made with
12 the prior express consent of the called party) to an ATDS
13 Revocation Class member, who had revoked any prior express
14 consent to be called using an ATDS, using any automatic
15 telephone dialing system or any artificial or prerecorded voice
16 to any telephone number assigned to a cellular telephone
17 service;

18 b. Whether Plaintiffs and the ATDS Revocation Class members
19 were damaged thereby, and the extent of damages for such
20 violation; and

21 c. Whether Defendant should be enjoined from engaging in such
22 conduct in the future.

23 36. As persons that received numerous telemarketing/solicitation calls
24 from Defendant using an automatic telephone dialing system or an artificial or
25 prerecorded voice, after Plaintiffs had revoked any prior express consent, Plaintiffs
26 are asserting claims that are typical of The ATDS Revocation Class.

27 37. Plaintiffs and members of The DNC Class and DNC Revocation Class
28 were harmed by the acts of Defendant in at least the following ways: Defendant

1 illegally contacted Plaintiffs and DNC Class and DNC Revocation Class members
2 via their telephones for solicitation purposes, thereby invading the privacy of said
3 Plaintiffs and the DNC Class and DNC Revocation Class members whose
4 telephone numbers were on the National Do-Not-Call Registry. Plaintiffs and the
5 DNC Class and DNC Revocation Class members were damaged thereby.

6 38. Common questions of fact and law exist as to all members of The
7 DNC Class which predominate over any questions affecting only individual
8 members of The DNC Class. These common legal and factual questions, which do
9 not vary between DNC Class members, and which may be determined without
10 reference to the individual circumstances of any DNC Class members, include, but
11 are not limited to, the following:

- 12 a. Whether, within the four years prior to the filing of this
13 Complaint, Defendant or its agents placed more than one
14 solicitation call to the members of the DNC Class whose
15 telephone numbers were on the National Do-Not-Call Registry
16 and who had not granted prior express consent to Defendant and
17 did not have an established business relationship with
18 Defendant;
- 19 b. Whether Defendant obtained prior express written consent to
20 place solicitation calls to Plaintiffs or the DNC Class members'
21 telephones;
- 22 c. Whether Plaintiffs and the DNC Class member were damaged
23 thereby, and the extent of damages for such violation; and
- 24 d. Whether Defendant and its agents should be enjoined from
25 engaging in such conduct in the future.

26 39. As persons that received numerous solicitation calls from Defendant
27 within a 12-month period, who had not granted Defendant prior express consent
28 and did not have an established business relationship with Defendant, Plaintiffs are

1 asserting claims that are typical of the DNC Class.

2 40. Common questions of fact and law exist as to all members of The
3 DNC Class which predominate over any questions affecting only individual
4 members of The DNC Revocation Class. These common legal and factual
5 questions, which do not vary between DNC Revocation Class members, and which
6 may be determined without reference to the individual circumstances of any DNC
7 Revocation Class members, include, but are not limited to, the following:

- 8 a. Whether, within the four years prior to the filing of this
9 Complaint, Defendant or its agents placed more than one
10 solicitation call to the members of the DNC Class whose
11 telephone numbers were on the National Do-Not-Call Registry
12 and who had revoked any prior express consent and any
13 established business relationship with Defendant;
- 14 b. Whether Plaintiffs and the DNC Class members were damaged
15 thereby, and the extent of damages for such violation; and
- 16 c. Whether Defendant and its agents should be enjoined from
17 engaging in such conduct in the future.

18 41. As persons that received numerous solicitation calls from Defendant
19 within a 12-month period, who, to the extent one existed, had revoked any prior
20 express consent and any established business relationship with Defendant,
21 Plaintiffs are asserting claims that are typical of the DNC Revocation Class.

22 42. Plaintiffs will fairly and adequately protect the interests of the
23 members of The Classes. Plaintiffs have retained attorneys experienced in the
24 prosecution of class actions.

25 43. A class action is superior to other available methods of fair and
26 efficient adjudication of this controversy, since individual litigation of the claims
27 of all Classes members is impracticable. Even if every Classes member could
28 afford individual litigation, the court system could not. It would be unduly

burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Classes member.

44. The prosecution of separate actions by individual Classes members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Classes members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

45. Defendant has acted or refused to act in respects generally applicable to The Classes, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the ATDS Class and ATDS Revocation Class

46. Plaintiffs repeat and incorporate by reference into this cause of action the allegations set forth above at Paragraphs 1-45.

47. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227(b)(1)(A)*.

48. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiffs and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

49. Plaintiffs and the ATDS Class and ATDS Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class and the ATDS Revocation Class

50. Plaintiffs repeat and incorporate by reference into this cause of action the allegations set forth above at Paragraphs 1-45.

51. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

52. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiffs and the ATDS Class and ATDS Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

53. Plaintiffs and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class and the DNC Revocation Class

54. Plaintiffs repeat and incorporate by reference into this cause of action the allegations set forth above at Paragraphs 1-45.

55. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular

47 U.S.C. § 227 (c)(5).

56. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*, Plaintiffs and the DNC Class and DNC Revocation Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

57. Plaintiffs and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class and DNC Revocation Class

58. Plaintiffs repeat and incorporate by reference into this cause of action the allegations set forth above at Paragraphs 1-45.

59. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, in particular *47 U.S.C. § 227(c)(5)*.

60. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(c), Plaintiffs and the DNC Class and DNC Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

61. Plaintiffs and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request judgment against Defendant for the following:

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FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiffs and the ATDS Class and ATDS Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiffs and the ATDS Class and ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiffs and the DNC Class and DNC Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- Any and all other relief that the Court deems just and proper.

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1 **FOURTH CAUSE OF ACTION**

2 **Knowing and/or Willful Violations of the Telephone Consumer Protection
3 Act**

4 **47 U.S.C. §227(c)**

5 • As a result of Defendant's willful and/or knowing violations of 47
6 U.S.C. §227(c)(5), Plaintiffs and the DNC Class and DNC
7 Revocation Class members are entitled to and request treble damages,
8 as provided by statute, up to \$1,500, for each and every violation,
9 pursuant to 47 U.S.C. §227(c)(5).

10 • Any and all other relief that the Court deems just and proper.

11 62. Pursuant to the Seventh Amendment to the Constitution of the United
12 States of America, Plaintiffs are entitled to, and demands, a trial by jury.

15 Respectfully Submitted this 23rd Day of October, 2018.

16 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

17 By: /s/ Todd M. Friedman
18 Todd M. Friedman
19 Law Offices of Todd M. Friedman
20 Attorney for Plaintiff